ELINOR D. O'ROURKE

IBLA 94-498 Decided July 29, 1994

Appeal from a decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void for failure to pay rental fees. CAMC 15697, CAMC 46796, and CAMC 46799.

Request for stay denied as moot; decision affirmed.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

In the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 Congress mandated that failure to make the annual payment of claim rental fees as required by the Act shall conclusively constitute an abandonment of unpatented mining claims, mill or tunnel sites. Where a mining claimant tenders payment of the fees via a check that is later dishonored by her bank, the effect is the same as if the rental fees are not paid. The claims are properly declared abandoned and void if the mining claimant did not apply for a small miner exemption from the rental fee requirement.

APPEARANCES: Elinor D. O'Rourke, pro se.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Elinor D. O'Rourke appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated April 29, 1994, declaring three mining claims abandoned and void for failure to pay rental in the amount of $100 per claim or submit a certification of exemption from pay-ment of rental fees for the 1993 and 1994 assessment years.

BLM's decision acknowledged that it had received a check from O'Rourke in the amount of $600 (the amount of the rental fees required to be paid for the three claims) on August 25, 1993. However, it noted that, on September 8, 1993, it had received notification by the Bank of America, on which the check was drawn, that the remittance was "uncollectible." BLM ruled that a check that does not clear has the effect of BLM not ever having received the fees. BLM ruled that, as payment had there-fore not been timely submitted for the three claims, they were declared abandoned and void. O'Rourke (appellant) filed a timely notice of appeal. Appellant also requested a stay of the BLM decision pending Board review.

[1] On October 5, 1992, Congress enacted The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1374 (Act). A provision of that Act relating to mining established that

> for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of $100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

106 Stat. 1378. The Act also contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, also requiring payment of the $100 rental fee on or before August 31, 1993. 106 Stat. 1378-79.

Implementing Departmental regulations require that each claimant pay a non-refundable rental fee of $100.00 for each mining claim, mill site, or tunnel site for each specified assessment year for which the claimant desires to hold the claim, mill site, or tunnel site. 43 CFR 3833.1-5.
The only exemption provided from this annual rental requirement is avail-able under limited circumstances to claimants holding 10 or fewer claims on Federal lands in the United States. 43 CFR 3833.1-6. In order to qualify, the small miner must timely apply for the exemption with BLM and demonstrate that the mining claims are under notices or approved plans of operation, special use permit, or mining/reclamation permit, depending on the circumstances of the particular claims. Further, the applicant must show that the claims are producing or are under active exploration, with prescribed minimum and maximum gross revenues. 43 CFR 3833.1-6(a). Where a mining claimant fails to qualify for a small miner exemption from the rental fee requirement, failure to pay the fee in accordance with the Act and regulations results in a conclusive presumption of abandonment. Lee H. & Goldie E. Rice, 128 IBLA 137, 141 (1994). The Department is without authority to excuse lack of compliance with the rental fee requirement of the Act, to extend the time for compliance, or to afford any relief from the statutory consequences, and the Board may not consider special facts or provide relief in view of mitigating circumstances, such as timely filing of evidence of assessment work. Id.

The record confirms that, on August 25, 1993, BLM received a check from appellant in the amount of $600, the amount of the rental fees required to be paid for the three claims for assessment years 1993 and 1994. However, it also shows that the check was returned by the bank on which it was drawn as uncollectible on September 8, 1993. Longstanding Departmental precedent

is clear that submission of a check that is not honored by the bank does not constitute payment. Twin Arrow, Inc., 118 IBLA 55, 58 (1991); see James S. Guleke, 9 IBLA 73, 74 (1973); J. Martin Davis, A-26564 (Jan. 12, 1953). Submission of a check, which upon presentment is dishonored by the bank on which it is drawn, does not constitute timely payment of the service fees for annual mining claim filings. N.T.M., Inc., 128 IBLA 77, 80 (1993); R. Keith Barrett, 123 IBLA 240, 242 (1992).

Appellant alludes to confusion about the filing requirements. How-ever, she was able to comply fully with such, failing only in filing a valid remittance of the filing fees. Failure to present valid payment had the result that the filing fees were not timely paid for the assessment years ending in September 1993 and September 1994. 1/ Appellant notes that she was not notified that her check had been returned. The record indicates that, on September 10, 1993, BLM did return her check to her. However, it is irrelevant whether she received such notification, as the deadline for timely filing had already passed when appellant's bank returned the check to BLM as uncollectible, and it was already too late to submit timely payment.

Our review of appellant's request for a stay necessarily included examination of her assertion of likelihood of success on the merits of the case, pursuant to 43 CFR 4.21(b). In doing so, we have found that appellant's arguments cannot succeed, therefore we have decided the appeal on its merits. See Texaco Trading & Transportation Inc., 128 IBLA 239, 241 (1994). As we have resolved this appeal on its merits, the request for a stay is denied as moot.

Accordingly, pursuant to the authority delegated to Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed and the request for a stay is denied as moot.

David L. Hughes
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

1/ Appellant relates that she has relocated these claims. The validity of that relocation is not at issue in this appeal.